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UNITED STATES DISTRICT COURT

LAS VEGAS, NEVADA

ATLANTIC SPECIALTY INSURANCE
COMPANY, a foreign company,

Plaintiff,

vs.

GLOBAL PANDA ENTERTAINMENT,
LLC, a domestic limited liability
company,

Defendant.

Case No. 2:21-cv-1033

**COMPLAINT FOR
DECLARATORY RELIEF**

Plaintiff Atlantic Specialty Insurance Company (“Atlantic Specialty”) files this Complaint for Declaratory Relief (“Complaint”) and alleges as follows:

PARTIES

1. Atlantic Specialty is a New York corporation with its principal place of business in Plymouth, Minnesota. Atlantic Specialty is a national insurance company licensed to conduct business in Nevada.

2. Upon information and belief, Defendant Global Panda Entertainment LLC (“Global Panda”) is a revoked Nevada limited liability company that was previously licensed to conduct business in Las Vegas, Nevada.

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JURISDICTION AND VENUE

3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332 because there is complete diversity of citizenship among the parties and the amount in controversy, exclusive of fees and costs, is in excess of seventy-five thousand dollars (\$75,000.00).

4. This action is brought pursuant to 28 U.S.C. § 2201, the Declaratory Judgment Act, which provides for this Court to adjudicate a party's rights and other legal relations in an actual controversy.

5. Venue is proper in the United States District Court for District of Nevada pursuant to 28 U.S.C. § 1391(b).

FACTUAL ALLEGATIONS

6. On or about June 8, 2016, Christopher Scott Sykes ("Claimant") filed an Amended Complaint and Demand for Jury Trial ("Underlying Complaint") against Global Panda and others. A copy of the Underlying Complaint is attached as **Exhibit 1**.

7. The Underlying Complaint generally alleges the following:

- a. On or about July 1, 2014, Claimant was attending a Global Panda show when he was struck in his forehead by an unknown object.
- b. As a result of being struck in the head by this unknown object, Claimant has suffered serious injuries.

8. The Underlying Complaint asserts causes of action against Global Panda and others for (1) Negligence – Premises Liability; (2) Vicarious Liability / Respondeat Superior; and (3) Negligent Hiring, Training, Retention, and Supervision.

9. Global Panda tendered the Underlying Complaint to Atlantic Specialty for defense and indemnification (the "Claim") under Commercial General Liability Policy No. 710034033001 ("Policy") issued to named insured Global Panda with effective dates of March 15, 2014, to March 15, 2015. A copy of the Policy is attached as **Exhibit 2**.

10. Subject to its terms, conditions, limitations and exclusions, the Policy provides bodily injury and property damage liability coverage.

1 11. Subject to the Policy's terms, conditions, limitations and exclusions, Atlantic
2 Specialty accepted coverage for the Claim up to the liability limits and hired counsel to defend
3 Global Panda against the claims asserted in the Underlying Complaint.

4 12. The Policy contains the following provision which required Global Panda to
5 cooperate in the investigation, settlement or defense against the Underlying Complaint:

6 **SECTION IV—Commercial General Liability Conditions**

7 2. Duties In The Event of an Occurrence, Offense, Claim or Suit

8 * * *

9 c. You and any other involved insured must:

10 * * *

11 (3) Cooperate with us in the investigation or settlement of
12 the claim or defense against the "suit";

12 13. The duty to cooperate as set forth in the Policy is a condition of coverage.

13 14. Global Panda has failed and/or refused to comply with its duty under the Policy to
14 cooperate in the investigation, settlement or defense against the Underlying Complaint as evidenced
15 by (but not limited to) the following:

16 a. Failing and/or refusing to provide Atlantic Specialty or retained counsel with
17 an appropriate point of contact for Global Panda;

18 b. Failing and/or refusing to communicate with Atlantic Specialty or retained
19 counsel in connection with the Claim and the defense against the Underlying
20 Complaint;

21 c. Failing and/or refusing to assist Atlantic Specialty or retained counsel with
22 the preparation of responses to written discovery requests directed to Global
23 Panda; and

24 d. Failing and/or refusing to make available witnesses for deposition.

25 15. The Nevada Supreme Court has held that there is evidence in the underlying
26 litigation that Global Panda was not participating in its own defense:

27 Third, the district court found that Atlantic [Specialty] failed to
28 present evidence showing that Global Panda was not participating

1 in its own defense. *This finding was contrary to evidence in the*
 2 *record because affidavits show that Global Panda was not*
participating in its own defense. . . .

3 *Atlantic Specialty Ins. Co. v. The Eighth Judicial Dist. Ct.*, Case No. 81418, Order Granting Petition
 4 (Nev. Sup. Ct. Mar. 26, 2021) attached as **Exhibit 3**.

5 16. Global Panda's failure and/or refusal to comply with its duty to cooperate has
 6 substantially prejudiced Atlantic Specialty's rights under the Policy including (but not limited to)
 7 the right to control the defense against the Underlying Complaint and to assert relevant defenses
 8 with respect to liability and damages.

9 17. Because of Global Panda's failure and/or refusal to comply with its duty to
 10 cooperate under the Policy, Atlantic Specialty is entitled to disclaim coverage for the Claim made
 11 by Global Panda in connection with the Underlying Complaint.

12 **FIRST CAUSE OF ACTION**

13 **(Declaratory Relief)**

14 18. Atlantic Specialty incorporates by this reference each and every preceding
 15 allegation as if fully set forth herein.

16 19. An actual and justiciable controversy exists between Atlantic Specialty and Global
 17 Panda concerning the parties' rights and obligations under the Policy with respect to the Claim and
 18 the Underlying Complaint

19 20. By reason of the foregoing, a declaratory judgment is both necessary and proper in
 20 order to set forth and determine the rights, obligations, and liabilities that exist pursuant to the
 21 Policy.

22 21. Specifically, Atlantic Specialty seeks a declaratory judgment that there is no
 23 coverage afforded for the Claim or duty to defend against the Underlying Complaint given Global
 24 Panda's failure to satisfy its duty to cooperate under the Policy.

25 22. Atlantic Specialty is entitled to a declaration that it no longer owes to Global Panda
 26 any obligations (including the duty to defend or the duty to indemnify) under the Policy with respect
 27 to the Claim and the allegations in the Underlying Complaint.

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PRAYER FOR RELIEF

WHEREFORE Atlantic Specialty prays for judgment against Global Panda as follows:

1. That Atlantic Specialty is not obligated under the Policy to defend or indemnify Global Specialty against the Claim asserted in the Underlying Complaint.
2. That Atlantic Specialty be awarded its attorneys' fees and costs incurred in this action; and
3. That Atlantic Specialty be awarded such other and further relief as the Court may deem just and proper.

DATED this 1st day of June, 2021.

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